IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 877 of 2006

Date of decision: 26.4.2007

Dhaneshwar Singh ..Petitioner

Versus

State of H.P. & others. ….Respondents

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge

Whether approved for reporting?

For the Petitioner: Mr. Y.P.S. Dhaulta, Advocate.

For Respondents : Mr. M.S.Chandel, Advocate General
With Mr. R.M.Bisht, Dy.A.G.

Per Deepak Gupta, J (Oral)

The petitioner has filed the present writ petition challenging the orders annexure PA, PB, PC and PD. The brief facts of the case are that a notice was sent to the petitioner alleging that he has encroached upon some land and the Assistant Collector, 1st Grade, Tehsil Thunag, Distt. Mandi (H.P.) decided this matter on 4.12.2002 and ordered eviction of the petitioner. This order has been upheld by all the Revenue Officers.

The plea raised by Sh. Dhaulta, learned counsel for the petitioner is that the respondent had specifically raised a plea that he is in possession of the land for the last 30 years and has also stated that he is in adverse possession of the land. Therefore, according to him the Revenue Officer had no jurisdiction to decide the matter without converting itself into a civil Court.

Section 163(3) of the H.P.Land Revenue Act reads as follows :-

> "(1) xxxxxx
>
> (2) xxxxxx
>
> (3) When there is a question as to title or to the adverse possession, wherein the possession is claimed by an encroacher for a period beyond thirty years in relation to the land from which ejectment is made or is to be made under this section, the Revenue Officer, not below the rank of an Assistant Collector of the First Grade, shall proceed to determine the question, as if he, were a civil court and shall exercise all such powers as are exerciseable by a civil Court."

It is thus clear where a person raises a plea that he is in adverse possession of land for more than 30 years then the Revenue Officer is bound to convert itself into a Civil Court and try the matter as a civil suit.

Reference in this behalf may be made to the Judgment of the Division Bench of this Court in ***State of H.P. vs. Smt. Urmila Devi, Latest HLJ 2007 (HP) 16,*** wherein this Court held as follows:-

> "5. A combined reading of sub-sections (3) and (4) of Section 163 (supra) clearly suggests, without an iota of doubt that whenever a question as to title or a claim as to adverse possession, wherein it is inter-alia claimed by an encroacher that he or she has been in adverse possession of the property in question for a period beyond thirty years, arises in proceedings relating to land from which ejectment is sought to be effected by a revenue Authority exercising jurisdiction under sub-section (1) of Section 163, the said revenue Authority (not below the rank of Assistant collector 1st Grade) is under an obligation to proceed to determine

> this question as if he were a civil court and for such determination he is required to exercise all the powers of a civil court. A combined reading of the aforesaid two sub-sections further suggests that for the determination of the said question, the Revenue Officer shall follow the same procedure as is applicable to the trial of an original suit by a civil court. In the ultimate analysis the said Revenue Authority is required to pass a judgment as well as a decree in the same manner as a Civil Court would do with respect to a suit under the provisions of the Code of Civil Procedure. Sub-sections(3) and (4) of Section 163, therefore, constitute a complete code in themselves because these two sub-sections lay down and prescribe a complete procedure for determination of the question by the Revenue Officer relating to the title or the adverse possession and the manner in which such question has to be determined by him."

We have gone through the record. The petitioner had clearly raised a plea that he was in adverse possession of the land. Therefore, the Revenue Officer had no jurisdiction to decide the question without converting itself into a civil Court. In view of these facts, we set-aside the impugned orders of the Revenue Officers and remit the case back to the Assistant Collector, Mandi, who may try the matter like a Civil suit after exercising powers of a civil Court under Section 163 of the H.P. Land Revenue Act.

Writ petition is disposed of. No costs.

(Deepak Gupta), J.

April 26, 2007 (Surinder Singh), J.
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